IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3322 of 1990

With

SPECIAL CIVIL APPLICATION NO. 3575 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOMTIPUR KELAVANI MANDAL TRUST

Versus

STATE OF GUJARAT

Appearance:

MR AMIT M PANCHAL for Petitioners

Mr. I.M.Pandya, ASSTT. Government Pleader for Respondent No. 1

Mr. I.M.Pandya, ASSTT.GOVERNMENT PLEADER for Respondent No. 2

MR SV RAJU for Respondent No. 3

MR HAROOBHAI MEHTA for Respondent No. 23,24,25

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/04/2001

ORAL JUDGEMENT

These two petitions are filed in respect of one and the same order and hence they are being disposed of by this common judgment.

By means of these petitions, the petitioners have prayed for quashing and setting aside the order of the Government dated 29.5.90 at Annexure "G" passed by the Deputy Secretary, Education Department, Government of Gujarat, whereby the petitioners' application for closure of the institution has been rejected. The petiioner no.1 is a public trust and the petitioner no. 2 is a Secretary of the trust. The petitioners are running a primary as well as secondary schools, namely Revaben Prabhudas Bidiwala Primary school in Gomtipur area. It is a recognised primary school under the provisions of the Bombay Primary Education Act and also under Bombay Primary Education Rules. No aid has been granted by the Government to run these institutions. There were 20 classes in standards 1 to 7 having about 991 students in all. Earlier, the school was charging Rs. 15/- student per month. That fee was revised to Rs. 25/- per student per month and that was further revised to Rs. 45/- per month with the approval of the respondent no. 2 District Education Officer. The petitioner moved an application for the revision of the fees to Rs. 55/- per month per student and that was approved by the letter dated 18th January, 1989 in order to give central pay scales as per the Government resolution dated 25th September, 1987 and to meet with the increasing costs of administration of the school. The students who were studying in the institution belonged to economically backward class and children of the workmen of closed textile mills and there was an acute unemployment and economic misery and hardship. Hence, the students were not able to pay the fees in that respect. As per the audit report, the total income of the school for the year ending 31st March, 1989 was Rs. 4,08,853.80 ps. as against the expenditure of Rs. 5,82,298.35 ps. Hence the petitioners were not able to complete the loss of Rs. 1,73,444.50 ps. In the year ending on 31st March, 1990, approximately net loss to the institution was Rs. 1,75,000/-. Due to such loss, in the last two years there was no possibility for wiping out the said loss and the petitioner trust by its resolution dated 19th September, 1989 decided to close down with effect from 31st May, 1990. The petitioner moved an application dated 18.10.89 to the respondent no. 2 for grant of approval to close down the educational institution with effect from 31st May, 1990 under Rule 5

of the Schedule "F" of the Bombay Primary Education Rules, 1949. Rule 5 of the said Rules requires that no management of a recognised private primary school shall effect any reduction in the total number of classes in its school or close down the school without prior permission in writing of the Government. For this purpose, the management shall have to make an application to the authorised officer at least six months before the date from which it intends to reduce the number of class or close down the school. On receipt of such application, the authorised officer shall hear the management and forward such application with remarks to the Government through the Director of Primary Education. The Government may in such manner as may be deemed necessary, make such further inquiry as it may appear to it to be necessary and shall decide whether the application should be granted or refused either in whole or in part. The authorised officer, after receiving the application of the petitioner herein, forwarded that application to the Government through Director of Primary Education with his remarks. The Government by the impugned order dated 29th May, 1990, without assigning any reasons and without giving any opportunity of hearing to the petitioner refused to grant the closure of the school.

2. The contention of the learned counsel for the petitioners is that the impugned order is not sustainable in the eye of law as the Government is required to make an inquiry after receiving the report of the authorised officer through Director of Primary Education. That report's copy was not given to the petitioners. Hence, the petitioners were not able to know what were the contents of the report made by the authorised officer and what were the remarks of the Director of Primary Education regarding closure of the petitioers' institutiton. No inquiry as contemplated under the Rules has been conducted and so the petitioners are not aware of anything. The impugned order has been passed without giving any reasons by the Government. As such, the impugned order dated 29.5.90 is illegal and not sustainable int he eye of law. It is also contended on behalf of the petitioners that no authority can compel any person to run a charitable institution who applies for the closure of that institution and surrenders the recognition and gives statutory notice of six months to the authority. The learned counsel for the petitioner made oral submissions that are not based on the pleadings in the petition that there was an agitation against hike of the fees against the institution. Hence, there was no option for the petitioners except to close down the

school. No authority can compel such an institution to run a school. As such, the authority has no option except to accord approval to the proposal of the institution for closing down it. Under the provisions of the Act or Rules, as no punishment has been provided for closing down even for non-compliance of statutory rules, at the most the recognition could have been withdrawn and the recognition has already been surrendered and statutory notice of six months has also been given. As such, the Government has no option except to approve the proposal of the petitioner for closing down the school. It is also stated that the refusal of the trust's prayer for closure of the school by the Government is illegal, and against principles of natural justice and therefoer, it is not sustainable in the eye of law. The second petition being Special Civil Application no. 3575 of 1990 has been filed by the guardians of students, guardians' association for a direction to the respondent no.1 not to accord sanction to the application of the trust for closing the institution. That petition is also being decidede with this petition.

3. I have heard the learned counsel for the parties. It reveals from the record and submissions made on behalf of the parties that the authorised officer, after receiving the application of the petitioners has heard the petitioners. Thereafter, he forwarded the said application with his remarks to the Government through Director of Primary Education. The petitioners were not given a copy of the report of the authorised officer which was forwarded to the Government through Director of Primary Education. As the report was against the interest of the petitioners institution and since the Government has not given any opportunity of hearing to the petitioners before passing the impugned order, hence the principles of natural justice have been violated. The Government has refused to accept the proposal of the petitioners for closure of the institution without giving any opportunityof hearing. The Government is also required to make further inquiry from the parties concerned. At that time, the teachers who were working were also affected parties and they should have been given an opportunity of hearing before passing the impugned order. Neither an inquiry was conducted as contemplated under the provisions of Rule 5 of the Rules nor any opportunity was given to the petitioner or any other affected parties and even the teachers who were working in the institution have also not been given any opportunity as they were affected parties. The learned counsel for the parties therefore, suggested that the impugned orderbe quashed and set aside and the Government

be directed to pass appropriate orders after giving an opportunity of hearing to the parties concerned including the petitioners, institutions, teachers who were working in the institution and guardians and provide a copy of the report of the authorised officer who forwarded his report to the Director of Primary Education after hearing the management.

4. In the facts and circumstances of case therefore, I think it proper that the impugned order is required to be quashed and set aside and the matter is required to be remanded to the Government to pass appropriate orders after giving an opportunity of hearing to the parties concerned. Accordingly, this petition is allowed. The impugned order dated 29.5.1990 at Annexure "G" passed by the respondent no.1 is quashed and set aside. The respondent no.1 is directed to decide afresh the application of the petitioner after giving an opportunity of hearing to the affected parties including the petitioner Trust, teachers, guardians etc. and provide them a copy of the report made by the authorised officer to the Government. It is further directed that if thought fit, the Government will make an inquiry through any other officer who will pass appropriate orders giving out reasons. The respondent no.1 will take the decision within three months from the date of receipt of writ of this court or production of a certified copy of this judgment whichever is earlier. No other prayers have been pressed. Rule is made absolute accordingly with no order as to costs.

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